

# Washington's pending showdown on school funding: Legislature vs. Supreme Court

How will the education-funding showdown between the Legislature and Washington's Supreme Court end? Other states' experiences run the gamut from courts shutting school down to get what they want, to simply backing off.

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In the summer of 2005, the Kansas Legislature and that state's highest court played a game of chicken over state support of public schools.

The Kansas Supreme Court had ordered the Legislature that spring to pony up an additional \$285 million for K-12 education or the court would shut down every school in the state.

Lawmakers had come up with about half that money, but the court insisted on the full amount, setting a deadline of July 8.

A few days before, in meetings over the Fourth of July weekend, legislators blinked, approving the rest.

Washington may be headed toward a similar showdown.

This state's Supreme Court ruled in 2012 that lawmakers are violating the constitutional rights of Washington's 1 million schoolchildren by failing to provide them with an amply funded basic education.

The McCleary decision, named after parents Stephanie and Matthew McCleary, requires the Legislature to fully fund the state's public schools by 2018.

Lawmakers so far have only come up with about \$1 billion of the cost, which has been estimated at between \$3.5 billion to \$7 billion per two-year budget period.

In September, the court found the Legislature in contempt for failing to make sufficient progress.

But the court postponed punishment, giving lawmakers another chance to come up with much of that money in the next two-year budget, and a plan to provide the rest.

The court hasn't said what sanctions it may impose if the Legislature fails to do so, but it has asked the state if it should do what the plaintiffs propose — everything from

imposing fines to blocking money for noneducation programs, selling state property and shutting down the schools.

The prospect of that kind of Kansas-style gumption has raised eyebrows among those who track school-funding lawsuits around the country.

Washington will be a testing ground this year for how far state courts will go to enforce their rulings, said Michael Griffith, a school-finance expert with the nonpartisan Education Commission of the States.

But it's also possible that Washington's justices could back down, which was what happened more than 10 years ago in Ohio.

Between 1997 and 2002, the Ohio Supreme Court ruled four times that the state's overreliance on property taxes to fund schools was unconstitutional, but the Ohio lawmakers didn't make the changes the court required.

The high court eventually decided there was nothing more it could do and ended the case.

So if Washington lawmakers don't come up with enough money for education this year, will the justices go all Kansas on them or will the court give up like in Ohio?

Or will Washington's high court, working with a constitution that enshrines education as the state's top duty, enforce its orders in some new, groundbreaking way?

### **Education obligation**

Over the past several decades, high courts in almost every state have weighed cases claiming that lawmakers aren't meeting the obligations set out in their state's constitutions to pay for public education.

In 19 of those cases, the state (as a defendant) has prevailed, according to the National Education Access Network, an advocacy organization supporting plaintiffs that is based at Columbia University.

In some of those cases, the courts punted, saying they didn't have the authority to wade into debates over how states spend their tax dollars. Pennsylvania is on that list, as is Colorado.

Plaintiffs, usually a combination of school districts, students and teachers, have won in 24 states, according to the network. States in that category include Kentucky, along with Vermont, New Jersey, Kansas and Ohio.

But when it comes to enforcing those rulings, the courts have a mixed record, which often reflects local politics and economics.

In Kentucky, for example, a year after the high court declared the state's school system unconstitutional, lawmakers enacted sweeping reforms in 1990 that not only increased money for education, but established higher learning standards, expanded preschool and boosted teacher training.

Other courts had to show more muscle to get results.

New Jersey's Supreme Court, for example, shut down school for eight days in the summer of 1976 because the Legislature had failed to come up with enough money for schools.

"They made their point," said Michael Rebell, a Columbia University law professor and the National Education Access Network's executive director.

"They were telling the Legislature that we can do this in July, we can do it in September, so the Legislature came around."

Subsequent plaintiff victories in New Jersey resulted in, among other things, money for a universal preschool program in 31 urban, low-income school districts.

But even such seemingly decisive victories don't always last.

In Kansas, for example, there is now another school-funding lawsuit alleging that lawmakers have reneged on their 2005 commitments.

This time, the Kansas court appears to be more willing to work with legislators to avoid another standoff, Rebell said.

Courts and legislatures tend to compromise, he said, leading to a result "that everybody can live with."

That's what he expects to see in Washington, too.

## **No consequences**

Ohio was a different story.

Ohio's Supreme Court justices ruled four times in favor of a coalition of school districts, but never threatened any consequences when lawmakers repeatedly came up short.

And in December 2002, the court justices, who are elected, declared that they would no longer retain jurisdiction.

That effectively ended the case before a new majority on the court — considered to be more sympathetic to the Legislature — was to take office.

“What happened in Ohio is just the most disgraceful example of a judicial turnaround for political reasons,” Rebell said. “I’m not aware of any other court that just caved in to that extent.”

That’s why he sees Ohio as an outlier.

But Joshua Dunn, a political scientist at the University of Colorado, Colorado Springs, predicts that Washington’s final result will end up looking more like Ohio — tough talk but little action.

When courts order lawmakers to spend more money on education, lawmakers typically “spend a little bit more money and then say, ‘We’ve done what we can,’ ” Dunn said.

And he said a pattern often emerges, with education-spending increases in good economic times (which might have happened even without the lawsuits) and cutbacks in lean ones, which is when the cases often end up back in court.

The lawsuits in New Jersey, for example, now span more than three decades.

## **Possibilities**

In Washington, lawmakers now are debating whether and how to live up to what the court wants it to do, which is essentially based on what lawmakers have promised: spending more money on transportation, school maintenance, supplies, operating costs, full-day kindergarten and reduced class sizes for grades K-3.

If lawmakers come up with the money to do all that, the standoff will end peaceably.

If they don’t, and Washington’s Supreme Court dives in with sanctions, the enforcement would surpass the Kansas court, which never had to make good on its threat of closing the schools.

And if Washington’s justices tiptoe to the edge but don’t follow through with punishment?

“Then people will just shrug and go, ‘Meh, this is like Ohio,’ ” said Griffith, of the Education Commission of the States.

But Thomas Ahearne, the attorney for the McCleary plaintiffs, says those aren’t the only two possibilities. In his view, Washington’s case is different from Kansas, Ohio or any other school-funding lawsuit.

He says that’s because the court, in the McCleary decision, ruled that Washington’s Constitution “confers on children in Washington a positive constitutional right to an amply funded education.”

In other states, the argument has been over whether a school system is adequately funded, not whether an adequately funded system is each child's right.

The distinction between systems and rights, Ahearne argues, makes the McCleary case different — more like federal school-desegregation cases, which were enforced more successfully than typical school-funding cases.

In those cases, he said, "You've got a constitutional right of every black kid to attend a desegregated school."

And in Washington's McCleary case, he said, "You have the constitutional right of every Washington kid to have an amply funded education."

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